

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 30, 2014

EVENT DATE: 01/31/2014

EVENT TIME: 10:30:00 AM

DEPT.: C-61

JUDICIAL OFFICER: John S. Meyer

CASE NO.: 37-2013-00050258-CU-SL-CTL

CASE TITLE: ASHARI VS. SHARP [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Securities Litigation

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Attorney Fees, 10/15/2013

Defendant George Sharp brings this motion for an award of attorney fees following his successful special motion to strike.

"[I]n any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." CCP §425.16(c)(1).

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. 'California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' (*Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004–1005, 185 Cal.Rptr. 145.) The reasonable hourly rate is that prevailing in the community for similar work. (*Id.* at p. 1004, 185 Cal.Rptr. 145; *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002, 39 Cal.Rptr.2d 506.)" *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.

Counsel's hourly rate of \$375 is reasonable, considering counsel's knowledge, experience and rates within the community. Plaintiff does not contend otherwise.

The Court has reviewed the billing records. The work performed was reasonably related to the anti-SLAPP motion and this fee motion. The time spent for the tasks performed was reasonable.

Plaintiff contends that the hours spent researching and working to get *GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141 certified for publication are unreasonable because defendant did not rely on or cite *GetFugu* in the moving papers.

However, defendant could not cite *GetFugu* in his moving papers because it was not published until after the moving papers were filed. Furthermore, it appears that defendant's efforts were fruitful.

Plaintiff's contention that the time spent to prepare this fee motion is unreasonable or duplicative of a motion filed in the other identical action is without merit. The motions are based on different principles and different arguments. Any overlap between the motions is minimal.

Finally, the time spent preparing for the motion hearing, traveling to San Diego and attending the hearing was not unreasonable.

"Under *Serrano III* [v. *Priest* (1977) 20 Cal.3d 25], the lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. (*Serrano III*, *supra*, 20 Cal.3d at p. 49.) The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services. The " 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.' " (*Ibid.*)" *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

"Of course, the trial court is not *required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case; moreover, the party seeking a fee enhancement bears the burden of proof. *Id.*, at 1138.

The only factor identified by defendant to support his request for a multiplier is the fact that defense counsel provided the work performed on the anti-SLAPP motion on a contingency fee basis. The risk applied only if counsel was not successful. The contingency did not apply if counsel was successful, and defendant was responsible for fees regardless of whether or not fees were collected from plaintiff. The contingency nature did not apply to the entire action. This single factor, on a single motion, under these circumstances, does not militate in favor of augmenting the hourly rate.

THEREFORE, the motion for an award of attorney fees is **GRANTED** in favor of Defendant George Sharp and against Plaintiff Waleed Ashari, in the amount of \$33,150.00.